

[Page 82]

1 Q. And do you think that there were
2 approximately forty executives in 2005
3 also or were there more or less?

4 A. There might have been more. There
5 were more people at that time. There
6 might have been slightly more.

7 Q. So, about out of those
8 approximately forty, maybe four executives
9 in 2005, what percentage did West LB
10 reclassify as non-exempt after the
11 reclassification project?

12 MR. BASSEN: Objection.

13 THE WITNESS: I don't
14 recall.

15 BY MS. NEILAN:

16 Q. Was it all of them?

17 MR. BASSEN: Objection.

18 THE WITNESS: Again, I
19 don't recall the numbers. I don't.

20 BY MS. NEILAN:

21 Q. I don't want the exact number. I'm
22 entitled to your best estimate.

23 MR. BASSEN: You are not.

24 It's beyond the scope of the
25 deposition. It's neither a policy nor

[Page 83]

1 a practice.

2 THE WITNESS: It's not an
3 estimate. Honestly, it would be a
4 guess. A guess is not going to be
5 anywhere near right.

6 BY MS. NEILAN:

7 Q. Give me your best guesstimate.

8 MR. BASSEN: Objection.

9 THE WITNESS: Honestly, I
10 don't know. All of them, no. Not all
11 of them were reclassified.

12 BY MS. NEILAN:

13 Q. Was it more than one?

14 A. It was more than one.

15 Q. Do you know if it was closer to ten
16 or closer to forty?

17 MR. BASSEN: Continuing
18 objection.

19 THE WITNESS: I don't know.
20 I honestly don't know.

21 BY MS. NEILAN:

22 Q. So, what did West LB do after it
23 reclassified executives as non-exempt
24 after the exemption testing was complete
25 with respect to the compensation of those

[Page 84]

1 individuals?

2 A. Once they were reclassified as
3 non-exempt, they were eligible for overtime.

4 Q. When did West LB start paying
5 executives after the reclassification
6 project overtime compensation?

7 A. Yes. They paid them overtime after
8 they were reclassified and they paid them
9 back pay 'til, I believe it was,
10 August '04.

11 Q. When did West LB start paying these
12 executives that it reclassified overtime
13 going forwards?

14 A. I believe it was June of '05.

15 Q. In June '05, did West LB start
16 paying all executives overtime compensation?

17 A. All executives who were classified
18 as non-exempt.

19 Q. So after June '05, have there been
20 some executives at West LB who have been
21 reclassified as exempt?

22 A. Not that I'm aware of.

23 Q. What do you mean when you say that
24 West LB paid back pay to August 2004?

25 A. I mean that they were paid for any

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1 overtime that they did back until 2004.

2 Sorry, August 2004.

3 Q. Who was responsible, I mean which
4 individuals were responsible for paying
5 reclassified executives back pay?

6 A. For paying them? Actually, paying
7 them?

8 Q. Yes.

9 A. The payroll manager was responsible
10 for paying them.

11 Q. And how did the payroll manager
12 know how much to pay them?

13 A. The payroll manager received a
14 spreadsheet with the names of the
15 individuals impacted. He was asked to
16 verify the amounts to insure that the
17 calculations were correct and to process
18 the payments.

19 Q. Who gave the payroll manager the
20 spreadsheet?

21 A. I did.

22 Q. Do you have that spreadsheet?

23 A. Do I have the spreadsheet?

24 Probably somewhere we have it.

25 Q. How did you create that spreadsheet?

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1 A. How?

2 Q. Did you create the spreadsheet?

3 A. The spreadsheet was, yes. I don't
4 know that I created the original version
5 of the spreadsheet. Yes, I updated the
6 spreadsheet to include the estimated
7 overtime for those who were impacted.

8 Q. When you say "those who were
9 impacted," those who were reclassified as
10 non-exempt?

11 A. Yes. Those who were reclassified,
12 yes.

13 Q. How did you calculate the back pay
14 that was to be paid to the reclassified
15 executives?

16 A. The executives were consulted along
17 with our managers. The managers did a
18 first estimate. The individual managers
19 did a first estimate of the overtime. And
20 the manager met with their, they met with
21 their staff members once the estimate was
22 done and it was processed.

23 Q. Did you ever talk to the managers
24 about how to conduct this first estimate?

25 A. Yes.

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1 Q. Let's start with the outside of
2 advice of counsel. Are you aware of why
3 August 4 was chosen as the date?

4 A. No.

5 Q. My question now is: With knowledge
6 from anywhere, including from counsel, do
7 you know why August 2004 was chosen as the
8 date?

9 MR. BASSEN: I direct her
10 not to answer. Outside the scope of
11 the deposition and it's privileged and
12 work product.

13 If you have a proper
14 deposition notice, we may consider --

15 MS. NEILAN: I will accept
16 your objection based on
17 attorney/client privilege grounds.
18 For that reason, I will go on.

19 MR. BASSEN: It's not a
20 question of you accepting anything.

21 MS. NEILAN: You know, it's
22 improper to object. You can object to
23 the scope. She has to answer my
24 questions.

25 MR. BASSEN: Not if it's

[Page 93]

1 privileged.

2 MS. NEILAN: So, it's based
3 on privilege?

4 MR. BASSEN: In conjunction
5 with an improper question outside the
6 scope. If there was a proper scope,
7 then we would consider waiving the
8 privilege. It's not the time for us
9 to consider it here because that's not
10 what the deposition called for.

11 MS. NEILAN: If you do not
12 consider it attorney/client privilege,
13 then I will move on.

14 BY MS. NEILAN:

15 Q. Did West LB make any retroactive
16 payments to executives for work that they
17 performed prior to August 2004?

18 A. Not that I'm aware of.

19 Q. So, with respect to all of the
20 executives that West LB classified in...
21 strike that.

22 Let me start again. With
23 respect to all of the executives that West
24 LB reclassified as non-exempt in the
25 spring of 2005, is it correct that West LB

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1 did not pay any of those executives
2 overtime compensation for any time period
3 prior to August 2004?

4 A. Repeat the question.

5 Q. Sure. With respect to all the
6 executives that West LB reclassified as
7 non-exempt in the spring of 2005, is it
8 correct that West LB did not pay any of
9 those executives overtime compensation for
10 any time period prior to August 2004?

11 A. Not that I'm aware of.

12 Q. So is the answer, yes, to the best
13 of your knowledge?

14 MR. BASSEN: Asked and
15 answered.

16 THE WITNESS: I'm not aware
17 of any additional overtime pay.

18 BY MS. NEILAN:

19 Q. Are you aware of West LB paying any
20 executives that it reclassified as
21 non-exempt in the spring of 2005 overtime
22 compensation for work that they performed
23 prior to August 2004?

24 MR. BASSEN: Let the record
25 note this is the third time the

[Page 95]

1 question has been asked and answered.

2 THE WITNESS: I'm not aware
3 of it.

4 BY MS. NEILAN:

5 Q. How did you verify the amounts of
6 overtime that the managers came up with
7 when they estimated unpaid overtime?

8 MR. BASSEN: Objection.

9 Asked and answered.

10 THE WITNESS: Managers did
11 the initial estimate and they reviewed
12 their estimates with the executives.
13 Executives had the opportunity to
14 agree or disagree and that's, basically,
15 how the estimates were determined.

16 BY MS. NEILAN:

17 Q. Did you verify in any way the
18 estimates?

19 A. I personally did not verify the
20 estimates.

21 Q. Did anyone, other than the
22 individual executives managers, verify the
23 estimates?

24 A. No.

25 Q. And were the managers actually

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1 words, they filled out time sheets and the
2 time sheets would have indicated on which
3 days they worked, what hours. There would
4 have been a calculation of how many hours
5 they worked in a week, how many hours over
6 forty. Depending upon what days of the
7 week those were, Monday through Friday,
8 was it Saturday? Was it Sunday? It
9 varied depending upon the particular
10 circumstances of that individual.

11 Q. So, let's narrow my hypothetical.
12 Let's say the individual worked Monday
13 through Friday. Again, this hypothetical
14 secretary in question worked forty-two
15 hours during a work week in September
16 2004, what would West LB have paid that
17 individual prior to its reclassification
18 project?

19 MR. BASSEN: Objection.

20 THE WITNESS: Forty-two
21 hours actually worked?

22 BY MS. NEILAN:

23 Q. Yes.

24 A. Forty-two hours actually worked,
25 they would have gotten their thirty-five

[Page 100]

1 hours. After thirty-five, sorry,
2 thirty-six to forty, they would have been
3 paid straight time. Over forty,
4 time-and-a-half, assuming Monday through
5 Friday, no holiday situation.

6 Q. Apart from that, would West LB have
7 paid this hypothetical secretary any other
8 compensation as part of its re-
9 classification project?

10 MR. BASSEN: Objection.

11 THE WITNESS: They paid the
12 back overtime that was calculated as
13 part of the exercise with the managers
14 and the executives.

15 BY MS. NEILAN:

16 Q. Did West LB pay interest to
17 employees as part of these retroactive
18 payments?

19 A. No, they did not pay interest.

20 Q. Did West LB pay any money
21 attributed to retroactive damages as part
22 of its payments?

23 A. No.

24 Q. Did West LB use the same dates for
25 employees when it was making these

[Page 101]

1 retroactive payments?

2 A. I'm sorry, what is the question?

3 Q. Did West LB use the same, the same
4 dates to make the retroactive payments to
5 all the executives? Did West LB only make
6 these retroactive payments from August
7 2004 until June 2005?

8 MR. BASSEN: Objection.

9 THE WITNESS: For those
10 reclassified, yes.

11 BY MS. NEILAN:

12 Q. Only for that time period?

13 MR. BASSEN: Objection.

14 THE WITNESS: To the best
15 of my knowledge, yes.

16 BY MS. NEILAN:

17 Q. Can you tell me the names of the
18 different departments at West LB?

19 MR. BASSEN: Objection.

20 Beyond the scope of this deposition.
21 Neither policy nor a practice.

22 THE WITNESS: There are
23 many, many names of departments at
24 West LB.

25 BY MS. NEILAN:

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1 A. Or in asset management here in the
2 United States.

3 Q. Just here in the United States.

4 A. There's not that many. I would say
5 there's, maybe, maybe a dozen.

6 Q. With respect to the current
7 employees in the HR department that West
8 LB classifies as exempt, does West LB
9 classify them as exempt under the
10 administration exemption or professional
11 exemption?

12 MR. BASSEN: No objection
13 to the extent it calls for a legal
14 conclusion.

15 THE WITNESS: I did not do
16 the exemption testing. I wouldn't be
17 able to speak to that.

18 BY MS. NEILAN:

19 Q. Do you know what the executive
20 exemption is under the Fair Labor
21 Standards Act?

22 A. I have general knowledge of it.

23 Q. What do you know about it?

24 A. Not enough to speak intelligently
25 about it.

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1 Exemption testing was done
2 by our internal counsel. As it relates to
3 managers, it was done by external counsel.

4 Q. Do you have any knowledge of the
5 administrative exemption under the Fair
6 Labor Standards Act?

7 A. I have knowledge that it exists. I
8 don't know very much about it. We relied
9 on external counsel to do the evaluations
10 of those positions.

11 Q. Did you ever receive any training
12 on the requirement of the Fair Labor
13 Standards Act?

14 A. Personally?

15 Q. Yes.

16 A. No.

17 Q. Did you ever receive any training
18 on the requirements of New York Labor Law?

19 A. No.

20 Q. What exemption testing was
21 performed by counsel with respect to
22 managers?

23 A. The outside counsel was provided
24 with job descriptions. They conducted
25 interviews with managers with respect to

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1 the job responsibilities and duties of
2 individuals and they determined the
3 classification of those positions that
4 were being evaluated.

5 Q. Who was the outside counsel?

6 A. Rich Greenberg.

7 Q. What law firm?

8 A. Jackson Lewis.

9 Q. When did West LB retain Rich
10 Greenberg to conduct this exemption
11 testing?

12 A. I don't know the exact date that he
13 was retained. I know that he was given or
14 provided with information sometime in the
15 fall of 2006. I believe he was retained
16 prior to that.

17 Q. And prior to your retaining Mr.
18 Greenberg to conduct this exemption
19 testing, did West LB conduct any other
20 exemption testing with respect to managers?

21 A. Not that I'm aware of.

22 Q. With respect to the
23 reclassification project that you
24 testified earlier, was that limited to
25 executives?

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1 A. The reclassification of the
2 executives was, yes, separate than the
3 evaluation of the managers.

4 Q. And as part of the -- prior to the
5 exemption testing performed by outside
6 counsel from Jackson Lewis, how did West
7 LB classify managers?

8 A. I believe up until that point,
9 most, if not all managers, were classified
10 as exempt.

11 Q. Did there come a time when West LB
12 reclassified some managers as non-exempt
13 employees?

14 A. Yes. There was a time after the
15 evaluation that West LB reclassified some
16 managers as non-exempt.

17 Q. When was that?

18 A. The first reclassification for a
19 small group of individuals was done in
20 January'ish of 2007 and the rest were
21 completed, I would say, in May of 2007.

22 Q. And how many managers were
23 reclassified in 2007?

24 A. Somewhere around a dozen.

25 Q. And how many managers were

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1 reclassified in May of 2007?

2 A. Somewhere around a dozen. Around a
3 dozen, I would say.

4 Q. And apart from those two
5 reclassifications, approximately
6 twenty-four positions, did West LB ever
7 reclassify any other managers?

8 A. Since that time, I don't believe
9 so. I don't believe that anyone up until,
10 I don't believe anybody was promoted. I
11 don't believe that anyone else was
12 reclassified since that time because that
13 would have been after promotions, so, no.

14 Q. With respect to those twenty-four
15 positions that were -- strike that.

16 With respect to the
17 twenty-four "manager" positions that were
18 reclassified from exempt to non-exempt,
19 did West LB apply the administrative
20 executive or professional exemption?

21 A. I don't know. That was determined
22 by outside counsel.

23 Q. You have no knowledge regarding
24 that?

25 A. I don't know specifically, no.

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1 Q. Who made the decision at West LB to
2 reclassify those twenty-four manager
3 positions?

4 A. We were guided by the advice given
5 to us by counsel.

6 Q. Were you involved in the process?

7 A. I was involved in the process.

8 Q. Who else was involved in the
9 process?

10 A. Amy Favetta was involved in the
11 process. Gregory Reiber was involved in
12 the process. A variety of managers who
13 were interviewed were involved in the
14 process. Natalie Henriquez might have
15 been involved to a lesser extent than the
16 rest of us.

17 Q. Anybody else?

18 A. Linda, probably, too. Again, to a
19 lesser extent than the rest of us.

20 Q. Linda Shirley?

21 A. Yes.

22 Q. What was your involvement in the
23 process?

24 A. My involvement in the process was
25 very limited.

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1 Amy was managing the
2 process in conjunction with Greg and they
3 were dealing with the outside, with
4 outside counsel on the project.

5 Q. What did you do on the project?

6 A. I met with Amy. I met with Greg to
7 discuss the project, the status of the
8 project, the outcome of the project and at
9 one point, I met with Rich Greenberg with
10 respect to the positions within HR.

11 Q. As part of the reclassification of
12 some managers, did West LB issue any
13 surveys?

14 MR. BASSEN: Objection.

15 THE WITNESS: I don't
16 believe that there were any surveys.

17 There were interviews.

18 BY MS. NEILAN:

19 Q. Who conducted the interviews?

20 A. Rich Greenberg.

21 Q. Who did he interview?

22 A. He interviewed a number of
23 managers. I couldn't say exactly who, off
24 the top of my head.

25 Q. Did he interview all of the

[Page 123]

1 managers at West LB?

2 A. I don't know if he interviewed all
3 of them.

4 Q. Do you know any of the managers
5 that he did interview? Do you know their
6 names?

7 A. I don't know. I couldn't say who
8 exactly who he interviewed.

9 Q. How do you know he interviewed
10 managers?

11 A. Because I was advised by Amy and
12 Greg who set up the interviews.

13 Q. Do you know how many interviews
14 they set up?

15 A. I don't know how many they set up.

16 Q. Do you know how long the interviews
17 lasted?

18 A. The individual interviews them-
19 selves?

20 Q. Yes.

21 A. I have no idea.

22 Q. Did you sit in on any of these
23 interviews?

24 A. No. Only my own interview. Only
25 when I spoke to him about the HR people.

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1 Q. And when you say that Richard
2 Greenberg interviewed the managers, was he
3 interviewing the managers that were at the
4 subject of the reclassification project or
5 was he interviewing supervisors of those
6 individuals in questions?

7 A. Interviewing the supervisors of
8 those individuals in question.

9 Q. So, did Richard -- did outside
10 counsel conduct any interviews as part of
11 its exemption testing of managers, of the
12 actual managers themselves?

13 A. I don't know. I'm not sure if he
14 did or not.

15 Q. You just have knowledge of
16 interviewing supervisors of the managers,
17 is that correct?

18 A. Yes.

19 Q. You have no knowledge of outside
20 counsel interviewing the managers them-
21 selves?

22 A. No, I do not.

23 Q. Would Amy Favetta or Greg Reiber
24 know whether managers themselves were
25 interviewed as part of the exemption

[Page 125]

1 testing of managers?

2 A. Yes.

3 Q. So, you never discussed that with
4 Greg Reiber and Amy Favetta?

5 A. It never came up in conversation.

6 Q. What did come up in your
7 conversations regarding exemption testing
8 managers?

9 A. Basically, just status updates,
10 where were we with the project?

11 Q. Do you know what factors outside
12 counsel was evaluating when he interviewed
13 the supervisors or the managers as part of
14 the exemption testing?

15 MR. BASSEN: I ask you not
16 to answer the question.

17 MS. NEILAN: Why are you
18 asking her not to answer?

19 MR. BASSEN: Two reasons:
20 Same as before. Outside the scope of
21 the notice and it's privileged and
22 work product.

23 If you want to have a
24 proper deposition about it with a
25 proper notice, we will consider

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1 so, as a result of that, their job
2 descriptions may have changed.

3 Q. Were any of these twelve
4 individuals that were reclassified in
5 January 2007 moved to this middle office?

6 A. Their department was impacted, yes.

7 Q. Do you know if their job, the
8 twelve managers were reclassified in
9 January 2007 whether or not their job
10 descriptions actually changed?

11 A. I don't know for sure.

12 Q. What about the managers who were
13 reclassified in May 2007, did their job
14 classifications change after the
15 reclassification?

16 A. Change after the reclassification?
17 I don't know.

18 Q. What about before the
19 reclassification?

20 A. I don't know. Each of the jobs,
21 each of the individuals' impact were
22 different and they all had different job
23 descriptions. I really couldn't say.

24 Q. Do you know if any of the job
25 descriptions of any of the managers' job

[Page 130]

1 classifications changed?

2 A. I don't know.

3 Q. Were any of the managers in the HR
4 department reclassified in either of these
5 reclassifications in 2007?

6 A. No.

7 Q. So prior to 2007, all managers in
8 HR have been classified as exempt, is that
9 correct?

10 A. That's correct.

11 Q. And since 2007, up to the present
12 time, all managers, with the exception of
13 Sandra Russo, have been classified as
14 exempt, is that correct?

15 A. That's correct.

16 Q. As part of the reclassification in
17 January 2007, did West LB pay any of those
18 managers any money?

19 A. No.

20 Q. What about the reclassification in
21 May 2007?

22 A. Once they became, once they were
23 reclassified as non-exempt, they were then
24 eligible for overtime.

25 Q. So that approximately twelve

[Page 131]

1 managers that West LB reclassified in
2 January 2007 classified them from exempt
3 employees to non-exempt employees, is that
4 correct?

5 A. Yes.

6 Q. Why did West LB reclassify them as
7 non-exempt?

8 A. They were reclassified based on the
9 advice of counsel.

10 Q. What was counsel's decision based
11 on?

12 MR. BASSEN: Objection. I
13 direct her not to answer.

14 MS. NEILAN: Why are you
15 directing her not to answer?

16 MR. BASSEN: You asked what
17 was counsel's advice based on. That's.
18 privileged work product, outside this
19 deposition.

20 If you want to take a
21 deposition on that properly noticed,
22 we will consider whether to waive it.
23 We are not waiving it now if it's
24 outside the scope.

25 BY MS. NEILAN:

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1 Q. Why did West LB reclassify the
2 approximately twelve managers that it
3 reclassified in May 2007 from exempt to
4 non-exempt?

5 A. They were reclassified based on the
6 advice of counsel.

7 Q. What was the advice of counsel?

8 MR. BASSEN: Same direction.

9 BY MS. NEILAN:

10 Q. Did West LB make any retroactive
11 payments to any of the managers that it
12 reclassified in 2007?

13 A. No, not that I'm aware of.

14 Q. Why did West LB make retroactive
15 payments to executives in 2005 that had
16 been classified as exempt and reclassified
17 as non-exempt and not making retroactive
18 payments to managers who were classified
19 as exempt and then classified as non-
20 exempt?

21 A. Based on the advice of counsel.

22 Q. What was that advice?

23 MR. BASSEN: Same direction.

24 MS. NEILAN: Are you

25 directing her not to answer based on

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1 the attorney/client privilege?

2 MR. BASSEN: Exactly what I
3 said before.

4 MS. NEILAN: Based on
5 attorney/client privilege?

6 MR. BASSEN: Exactly what I
7 said before.

8 MS. NEILAN: I would like
9 to take a lunch break now.

10 (Luncheon recess taken,
11 11:46 a.m.)

12 ----
13 (Afternoon session
14 commenced, 12:38 p.m.)

15 BY MS. NEILAN:

16 Q. So, West LB classified all managers
17 as exempt between 2001 until 2007, is that
18 correct?

19 MR. BASSEN: Objection.

20 THE WITNESS: I can tell
21 you from the point that I joined
22 forward. I can't really speak to the
23 period before that.

24 BY MS. NEILAN:

25 Q. Do you have any knowledge regarding

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1 on their job descriptions?

2 A. I thought we were talking about
3 managers.

4 Q. Pardon me.

5 Is it your testimony that
6 West LB classified all managers as exempt?

7 A. Based on their responses as
8 documented in their job descriptions.

9 Q. Did the job descriptions contain a
10 list of responsibilities?

11 A. Job descriptions would contain
12 roles and responsibilities, yes, duties.

13 Q. So, job descriptions contain roles
14 and responsibilities and the duties, is
15 that correct?

16 A. Yes.

17 Q. And did West LB classify all
18 managers based on their job descriptions?

19 A. To my knowledge, yes.

20 Q. And is that from October 2001 until
21 the present?

22 A. I can speak specifically to the
23 point forward that I was at West LB and I
24 can only assume that was the case before.

25 Q. Okay. So, from November 2004 until

[Page 138]

1 the present, West LB has classified
2 managers as exempt based on their job
3 descriptions, is that correct?

4 A. No, that is not correct. Based on
5 their job descriptions, managers were
6 classified in the appropriate categories,
7 whether that's as exempt or non-exempt.

8 Q. We have established now up until
9 2007 that managers at West LB were
10 classified as exempt.

11 A. I believe that would be the case.

12 Q. So, from November 2004 until
13 January 2007, did West LB classify all
14 managers as exempt based on their job
15 descriptions?

16 A. Based on, yes, their job
17 descriptions, their responsibilities as
18 documented in their job descriptions.

19 Q. From October 2001 until October
20 2004, do you know how West LB classified
21 all managers as exempt?

22 A. Do I know how West LB -- repeat
23 that question.

24 Q. Sure. Do you have any
25 understanding from October 2001 until

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1 October 2004 regarding how West LB
2 classified managers as exempt?

3 A. No.

4 Q. And for each functional title of a
5 manager, is there a job description?

6 A. I would say for the most part,
7 there is a job description. I wouldn't
8 say for functional title, but for each
9 role or position that a person is filling.

10 Q. Does each manager have a job
11 description?

12 A. Each manager should have a job
13 description, yes.

14 Q. Is there one job description for
15 all managers?

16 A. No.

17 Q. How many job descriptions are there
18 for managers?

19 A. I don't know. A lot.

20 Q. And who made the decision to
21 classify managers as exempt?

22 A. When?

23 Q. Let's talk about the time period
24 that you have knowledge from.

25 From October 2004 until

[Page 140]

1 January 2007, who made the decision at
2 West LB to classify managers as exempt?

3 A. Prior to the reclassification,
4 managers were classified exempt based on
5 their job descriptions. If you had a job
6 description that was deemed to be exempt,
7 they were exempt.

8 Q. And who deemed job descriptions
9 exempt or non-exempt?

10 A. I don't know who did the original
11 classifications.

12 Q. When you arrived at West LB in
13 October 2004, at that point had all job
14 descriptions for managers been deemed
15 exempt or non-exempt?

16 A. Yes, the job descriptions had
17 already had a classification.

18 Q. Was it written on the job
19 description what that classification was?

20 A. I'm not sure.

21 Q. From the time you joined West LB
22 until the exemption testing of managers in
23 '06 and '07, was there any review of the
24 job descriptions for managers to decide
25 whether the exempt or non-exempt

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1 classification was accurate?

2 A. You said prior to the project done
3 by the outside attorneys?

4 Q. That's correct. Prior to the
5 outside project done by the attorneys in
6 2006 and 2007, was there any review by
7 West LB regarding the classification of
8 managers exempt based on the job
9 descriptions?

10 A. I don't know.

11 Q. Who would know the answer to that
12 question?

13 A. I don't know. You would have to,
14 you would have to find someone that worked
15 there prior to my tenure.

16 Q. You don't know prior to October
17 2004?

18 A. No.

19 Q. What about from October 2004 -- the
20 exemption testing of managers in '06 and
21 '07, at that time period, did West LB
22 conduct any investigation or review
23 regarding the classification of managers
24 as exempt based on their job description?

25 A. Not until we initiated the project

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1 to take a look at the managers themselves.

2 Q. Okay. So, until that project was
3 initiated, if a new employee joined West
4 LB as manager, that employee automatically
5 would be classified as exempt based on the
6 job description?

7 A. We relied on the previous
8 classification, whatever that was, prior
9 to the reclassification.

10 Q. Prior to the reclassification all
11 managers were classified as exempt, is
12 that correct?

13 A. I believe so.

14 Q. So, if an employee joined West LB
15 prior to reclassification and had the
16 title of manager, would that employee
17 automatically be reclassified as exempt
18 from overtime compensation?

19 MR. BASSEN: Objection.

20 THE WITNESS: If an
21 employee, if a new employee joined
22 West LB and they were filling a job
23 which was a job which had been held by
24 someone else and there was a job
25 description which was already in place

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1 which assumably would have been
2 classified already, then, yes, they
3 would have had the previous
4 classification that the former
5 employee had.

6 BY MS. NEILAN:

7 Q. If a new employee joins and has the
8 position of manager prior to January 2007,
9 that new employee and manager position
10 automatically would be classified as
11 exempt?

12 MR. BASSEN: Objection.

13 BY MS. NEILAN:

14 Q. Is that correct?

15 MR. BASSEN: That's not
16 what she said.

17 THE WITNESS: If the person
18 was filling a position which was
19 already held and a job was already in
20 existence with an existing job
21 description which already had been
22 classified as exempt, then, yes, they
23 would also be classified as exempt
24 unless someone, unless someone changed
25 the job description or changed the

1 role or responsibility of that person.

2 BY MS. NEILAN:

3 Q. But, who is responsible for
4 creating or changing job descriptions?

5 A. Managers would initiate that
6 process. If a manager came in and they
7 said I want to hire someone to do X, which
8 is the same as either the person on the
9 job before or same as a current position
10 which is already in place, then we would
11 just fill the job as is. If they wanted
12 to change the responsibility, if there was
13 that reorganization, a combination of
14 duties, then they would work with someone
15 in HR to recreate the job description.

16 Q. But from November 2004 until
17 January 2007, were there any manager job
18 descriptions that were rewritten that
19 remained manager job descriptions in which
20 the classification changed from exempt?

21 A. I do not recall any, any change,
22 any changed manager job descriptions.

23 Q. Okay. You don't recall any changed
24 manager job descriptions from October 2004
25 until January 2007?

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1 A. I have no recollection of any other
2 than when we were doing the
3 reclassification they were going through
4 the process and reviewing them.

5 Q. Were job descriptions changed
6 during the reclassification?

7 A. It's possible. I don't know for
8 sure.

9 Q. Prior to the reclassification, were
10 any manager job descriptions changed?

11 A. Not to my knowledge.

12 Q. You don't have any knowledge
13 regarding whether job descriptions for
14 managers were changed after the
15 reclassification in January 2007?

16 A. As I said, it's possible. But, I
17 don't know of any off the top of my head.

18 Q. And where are the job descriptions
19 physically located at West LB?

20 A. I think I told you that already
21 which was, basically, on the share drive,
22 on the HR share drive.

23 Q. And if somebody asked you to print
24 out the job description from the HR share
25 drive for all executives and managers at

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1 classifications, based on the job
2 descriptions which were already classified
3 as exempt or non-exempt.

4 Q. The existing classifications in
5 2004 that you just testified about, those
6 were based on the job descriptions, is
7 that correct?

8 A. I would assume they were based on
9 the job descriptions.

10 Q. What were the executive positions
11 in the IT department?

12 A. I have no idea.

13 Q. You don't know any of the
14 functional titles of executives who work
15 in the IT department?

16 A. I do not.

17 MR. BASSEN: Objection.

18 Outside the scope.

19 BY MS. NEILAN:

20 Q. What are the possibility of
21 positions for executives --

22 MR. BASSEN: Continuing
23 objection. Improper questions.

24 THE WITNESS: In the IT
25 department?

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1 BY MS. NEILAN:

2 Q. Let's just recap.

3 You testified earlier that
4 secretaries, team assistants, mail clerks,
5 mail room clerks, were considered
6 executives, is that correct?

7 A. Yes.

8 Q. Are there any other positions that
9 required executive?

10 A. As I said before, there may be
11 other positions that I'm just not
12 recollecting at the moment.

13 Q. So when we focus on the IT
14 department, sitting here today as West
15 LB's corporate representative, are you
16 aware of what the executive positions are
17 in the IT department?

18 MR. BASSEN: Outside the
19 scope whether she is the corporate
20 representative or not. It's an
21 improper question. It's got nothing
22 to do with the notice.

23 MS. NEILAN: She is a
24 30(b)(6) witness.

25 MR. BASSEN: Read your

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1 notice.

2 MS. NEILAN: You will have
3 to produce another witness because
4 this witness cannot answer the
5 question.

6 MR. BASSEN: No, it is not
7 within the scope of your notice. We
8 are not producing another witness to
9 these questions.

10 MS. NEILAN: Yes, you will.

11 BY MS. NEILAN:

12 Q. Once again, Miss Carro, do you
13 know?

14 MR. BASSEN: Next time, we
15 are seeking a protective order before
16 you take any deposition.

17 You have spent more than
18 fifty percent of the time just like
19 you did last time on things outside
20 the scope of the notice.

21 You are also using up your
22 time. You have seven hours. You are
23 wasting it. You will not have more
24 than seven hours. Even if we bring
25 back other witnesses, it will be

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1 anyone from the HR department ever conduct
2 a study regarding how managers spend their
3 working time?

4 A. Not to my knowledge.

5 Q. Did you have knowledge of anyone
6 else with West LB, not the HR department,
7 but other departments that conducted any
8 such studies?

9 A. Not that I'm aware of.

10 Q. Apart from the one consultant that
11 you testified earlier, did West LB ever
12 hire, from October 2001 to the present,
13 any other consultants to examine West LB
14 classification of employees exempt or
15 non-exempt?

16 MR. BASSEN: Continuing
17 objection stops.

18 THE WITNESS: Not that I'm
19 aware of.

20 BY MS. NEILAN:

21 Q. Since this lawsuit was filed in
22 October 2007, has West LB conducted any
23 other exemption testing with respect to
24 executives or managers?

25 A. I believe that outside counsel has

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1 reviewed one job description.

2 Q. What job description is that?

3 A. I don't know which one it was.

4 Q. Was it a payroll manager position?

5 A. No.

6 Q. Apart from that, has West LB, since
7 October 2007, conducted any investigation
8 into the classification of managers or
9 executives?

10 A. No.

11 Q. Since October 2007, has West LB
12 reclassified any managers or executives?

13 A. Not to my knowledge.

14 Q. Why did West LB conduct its
15 exemption testing in 2004?

16 A. I believe it started as a
17 conversation between Greg Lahey and Janine
18 Christiano as a result of some change in
19 legislation.

20 Q. Do you know what that change was?

21 A. I have no idea.

22 Q. So, did West LB ever conduct any
23 exemption testing in response to
24 complaints regarding misclassification?

25 A. No. Not to my knowledge, no.

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1 Q. Let's take a break.

2 (Recess taken 1:42 p.m.)

3 ----

4 (Resumed, 1:55 p.m.)

5 BY MS. NEILAN:

6 Q. I just have a few questions for
7 you.

8 I just want to circle back
9 to a few things that we talked about
10 before. When I asked you questions
11 earlier, on the advice of counsel you
12 refused to answer some questions based on
13 counsel's invocation of the
14 attorney/client privilege. I need to know
15 what is the subject matter of the
16 privilege and the objection you are
17 asserting?

18 MR. BASSEN: Are you asking
19 her or me?

20 MS. NEILAN: I will ask
21 her.

22 BY MS. NEILAN:

23 Q. What is the subject matter of those
24 attorney/client communications that you
25 refuse to answer?